

**DEPARTMENT OF STATE REVENUE**  
**LETTER OF FINDINGS NUMBER: 05-0503P**  
**Food and Beverage Tax**  
**For the Months of July, August, and September 2005**

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on the date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

**ISSUES**

**I. Tax Administration – Penalty**

**Authority:** Indiana State Department of Revenue Commissioner's Directive # 30 (July 2005); IC 6-8.1-10-2.1

The taxpayer protests the penalties assessed for failure to calculate and remit the appropriate amounts of food and beverage tax.

**II. Tax Administration – Interest**

**Authority:** IC 6-8.1-10-1

The taxpayer protests the assessment of interest.

**STATEMENT OF FACTS**

The City-County Council of Marion County approved an increase in the food and beverage tax rate from one percent to two percent that became effective on July 1, 2005. The taxpayer used the incorrect rate of one percent when calculating the food and beverage tax for the months of July, August, and September 2005. Accordingly, the department issued assessments for the additional tax due. These assessments included penalty and interest. In correspondence to the Department, the taxpayer requested that the Department abate the penalties and interest due to reasonable cause.

**DISCUSSION**

**I. Tax Administration – Penalty**

The food and beverage tax returns and remittance of the tax is due 30 days following the close of each taxable month. In Commissioner's Directive # 30, regarding Local Food and Beverage Taxes, the Department advised the public of the increased tax rate.

Administrative Rule 45 IAC 15-11-2 (b) states the following:

“Negligence” on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

Because the taxpayer fails to show facts in support of his reasonable cause argument and the Department provided public notification of the change, the Department correctly assessed penalties on the taxpayer.

### **FINDING**

The taxpayer's protest is denied.

## **II. Tax Administration – Interest**

Under IC 6-8.1-10-1, the Department does not have the authority to waive interest.

### **FINDING**

The taxpayer's protest is denied.